

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

ORDER

**Badami Lal vs. Officer Incharge Bhandar,
Dhulev Mandir, Rishabdeo ji
(S.B.Civil Writ Petition No. 2336/2007)**

Date of Order:- 29.10.2007

HON'BLE MR.JUSTICE SANGEET LODHA

Mr. R.S.Mankad, for the petitioner.

BY THE COURT:-

This writ petition is directed against judgment dated 5.2.2007 passed by the learned District Judge, Udaipur in Misc. Civil Appeal No.72/05, whereby the appeal preferred by the petitioner against the order dated 16.3.2001 directing his eviction from the public premises in question under the provisions of Rajasthan Public Premises (Eviction of Unauthorised Occupants)Act, 1964(in short "the Act of 1964" hereinafter) , has been dismissed.

The respondent no. 1 herein, officer incharge, Dhulev Mandir, Rishabdeo preferred an application before the Estate Officer/Additional Commissioner, Devasthan Department under the provisions of the Act of 1964. After hearing both the parties, the application preferred by the respondent no. 1 was allowed by the Estate Officer vide order dated 17.9.1985 and the petitioner was ordered to be evicted from the public premises in question.

Aggrieved by order dated 17.9.1985, the petitioner preferred an appeal before the learned District Judge, Udaipur inter alia on the ground that he was not served with the notice u/s 5 of the Act of 1964. It was contended that since the petitioner is in occupation of the public premises , therefore, as per provisions of Section 4, the service of the notice upon him was mandatory. The learned Appellate Court arrived at the finding that the sub letting of the premises by the tenant is apparent from the record, therefore, notice should have been issued to all the persons concerned who are in unauthorized occupation of the premises. Accordingly, the appeal preferred by the petitioner was allowed by the learned District Judge vide order dated 20.2.1991 and the matter was remanded to the Estate Officer with the direction to take appropriate proceedings after service of the notice upon all persons concerned u/s 4 of the Act of 1964.

It is stated by the petitioner that after remand , the notices were issued by the Estate Officer to the persons concerned and in pursuance thereof, the petitioner put in appearance before the authority on 24.11.1994, thereafter, the case was dismissed on 27.10.98 and again the case was reopened without issue fresh notice u/s 4 to the petitioner. It has been categorically stated in the petition by the petitioner that thereafter, the petitioner did not appear in the matter and ex parte proceedings were initiated against him. It is further stated that the case was

transferred to Estate Officer, Rishabdeo, who proceeded with the matter and passed the order of eviction against the petitioner dated 16.3.2001. It is alleged by the petitioner that he came to know about the passing of the order dated 16.3.2001 when the Estate Officer came to the site on 9.8.2005. At this stage, the petitioner preferred an appeal alongwith an application u/s 5 of the Limitation Act for condonation of delay, before the learned District Judge, Udaipur against the order dated 16.3.2001. The appeal has been rejected by the learned District Judge vide order dated 5.2.2007 as barred by time. Hence, this writ petition aggrieved by order dated 5.2.2007 passed by the learned District Judge, Udaipur.

The record of the case no. 22/2004 from the Estate Officer (Assistant Commissioner), Devasthan Department, Tehsil Kherwara, district Udaipur and Civil Misc. Appeal No.72/05 was requisitioned by this Court from the Court of the District Judge, Udaipur.

I have heard the learned counsel and perused the record.

A perusal of the record reveals that on 29.10.1994, notices were ordered to be issued by the Estate Officer to the non-applicants. After service of the notice, on 24.11.1994, inter alia the petitioner herein appeared before the Estate Officer. Besides, an application was submitted on behalf of Mahavir Prasad and Mahendra Kumar. The matter was adjourned to 9.12.1994. On

the said date, Shri Prakash Chandra Paliwal, Advocate filed power on behalf of the petitioner. Nobody appeared on behalf of the remaining non-applicants. A reply was filed on behalf of the petitioner on 6.4.95. Thereafter, the matter was adjourned thrice i.e. on 29.4.1995, 19.5.1995 and 25.6.1995. On 25.6.1995, the matter was adjourned to 27.7.1995. It appears that thereafter, no proceedings were taken and the matter was again taken up on 17.10.1998 and notices were ordered to be issued to the parties for 6.11.1998. It is stated by the petitioner in para no. 4 of the writ petition that "Badami Lal, the present petitioner put in appearance on 24.11.1994, thereafter the case was dismissed on 27.10.98 and again the case was reopened without issuing fresh notices u/s 4 to the present petitioner on the previous notice u/s 4. Thereafter, petitioner did not put in appearance and ex parte proceedings were initiated against the present petitioner. Therefore, the case was transferred to Estate Officer, Rishabdeo who proceeded with the matter and passed the order of eviction against the present petitioner dated 16.3.2001."

A perusal of the record shows that the stand taken by the petitioner is ex facie false. The petitioner has mis-represented and suppressed material facts in his petition. As a matter of fact, there is no order dated 27.10.98 on record dismissing the case. As noticed above, after 25.6.1995 the matter was again taken up on 17.10.98 and notices were ordered to be issued to the

parties for the next date of hearing 6.11.98. The notice issued to the petitioner on 28.10.98, for the date of hearing 6.11.98 was duly served upon him on 31.10.98. On 6.11.98 the petitioner has put in appearance and the order sheet of the said date drawn by the Estate Officer bears his signature. On 6.11.98 it came to the notice of the Estate Officer that Officer incharge Bhandar has not presented a proper application for proceedings of eviction. The Officer incharge Bhandar sought time for submitting his case in appropriate manner. Accordingly, the matter was adjourned to 9.12.98 . Thereafter, the matter was adjourned twice over and on 17.2.99 again notices were ordered to be issued to the parties and the next date was fixed 3.3.99. It is pertinent to note that the notice for the date of hearing 3.3.99 issued on 24.2.99 was also duly served upon the petitioner on 27.2.99. Again on 2.4.99 on the applicant filing a fresh application, notices were ordered to be issued to the petitioner u/s 4(1) of the Act of 1964. However, when the order was being drawn on the said date, Shri Ganesh Lal appeared on behalf of the petitioner and filed his power. On 30.4.99 it was noticed by the Estate Officer that the copy of the application has not been sent to the non-applicant, petitioner herein alongwith notice u/s 4(1), therefore, fresh notice was ordered to be issued for the date of hearing 3.6.99. Thereafter, on account of transfer of the Presiding Officer the matter was again adjourned twice over and

on 19.7.99 again notices were ordered to be issued to the non applicant. The notice for the date of hearing 25.8.99 issued on 31.7.99 was also served upon the petitioner on 5.8.99. A perusal of order sheet dated 25.8.99 reveals that notice u/s 4(1) alongwith copy of application was duly served upon the petitioner and time was sought on his behalf for filing the reply . On the next date of hearing 13.10.99 and 12.11.99 the petitioner did not appear. Therefore, on the next date of hearing 16.12.99 the petitioner was proceeded ex parte. On 18.11.2000 the statement of Shri Udair Veer Singh Shishodia were recorded on behalf of the applicant. Thereafter, the matter was adjourned many a time but, the petitioner did not put in appearance. Later, the matter was transferred from the Estate Officer, Devasthan Udaipur Assistant Commissioner, Devasthan, Rishabdeo, therefore, on 23.9.2000 notices were ordered to be issued to the parties for the date of hearing 13.10.2000. On 13.10.2000 the petitioner appeared before the said authority and submitted an application which was taken on record and the matter was posted for hearing on 14.11.2000. The petitioner again defaulted and did not appear on the next date of hearing, therefore, the notices were ordered to be issued for the next date of hearing 12.12.2000. The notice for date of hearing 12.12.2000 issued on 7.11.2000 were duly served upon the petitioner on 19.11.2000. Despite service, the petitioner did not appear even on the next

date of hearing 12.12.2000. Since the petitioner had already been proceeded ex parte, therefore, on the request of the applicant the final arguments on the matter were heard and the matter was adjourned to 19.2.2001 for orders. On the said date since the Presiding Officer was busy in other government work, therefore, the matter was decided on the next date of hearing 16.3.2001 .

Thus, from the factual position on record narrated hereinabove, it is manifestly clear that an adequate opportunity of hearing was afforded to the petitioner, however, despite full knowledge of the proceeding he did not make any attempt for setting aside the ex parte proceedings. That apart , the petitioner has not approached this Court with clean hands, therefore, his conduct dis-entitles him from invoking the extraordinary jurisdiction of this Court . The writ petition deserves to be dismissed on this count alone.

Coming to the dismissal of the appeal by the learned District Judge, Udaipur vide impugned order dated 5.2.2007 it is to be noticed that the petitioner had pleaded that he had no knowledge of the order dated 16.3.2001 passed by the Estate Officer and he came to know about the passing of the order only on 9.8.2005 when the Estate Officer came on the site of the disputed public premises. These averments made by the petitioner are ex facie concocted and false. As a matter of fact,

copy of the order dated 16.3.2001 was served upon the petitioner on 19.3.2001 . That apart , a copy of the order was also affixed on the public premises in question in presence of two witnesses on the same date i.e. 19.3.2001. This stands fortified from the copy of the order drawn u/s 5(1) of the Act of 1964 which bears the signature of the petitioner and so also the report of the process server. Therefore, the entire edifice of the case raised by the petitioner is without foundation and the stand taken by the petitioner is false to his own knowledge. In my considered opinion, the learned District Judge has committed no error in dismissing the appeal preferred by the petitioner as barred by time.

Thus, the writ petition is devoid of any merit , accordingly, it is hereby dismissed with no order as to costs. The record of the case no. 22./2000 received from the Estate Officer (Assistant Commissioner), Devasthan Department, Tehsil Kherwara district Udaipur and of civil appeal no. 72/05 from the Court of District Judge, Udaipur may be sent back forthwith.

(SANGEET LODHA),J.